

IN THE MATTER OF:

Southern Avenue Industrial Area Superfund
Site

South Gate, Los Angeles County, California

5211 Southern Avenue LLC

Joyce Mendell Brody, as an individual and
in her capacity as the sole member and
manager of 5211 Southern Avenue LLC

SETTLING PARTY

SETTLEMENT AGREEMENT

U.S. EPA Region IX

CERCLA Docket No. 2019-06

PROCEEDING UNDER SECTION
122(h)(1) OF CERCLA,
42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to the Superfund Division branch chiefs pursuant to Regional Delegation No. R9 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Chief and Deputy Chiefs of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice pursuant to ENRD Directive No. 2016-03, Section I(D)(2).

2. This Settlement Agreement is made and entered into by EPA and 5211 Southern Avenue, LLC, a California limited liability company, and Joyce Mendell Brody as its sole member and manager and as an individual ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Southern Avenue Industrial Area Superfund Site ("Site") located in South Gate, Los Angeles County, California. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. During its investigation of the nearby Cooper Drum Company Superfund Site, EPA discovered that the groundwater beneath the Site is contaminated with high concentrations of volatile organic compounds (VOC) including trichloroethylene (TCE). The Site was listed on the National Priorities List (NPL) in May 2012 and EPA began Remedial Investigation (RI) in June of 2012. The Remedial Investigation and Feasibility Study (RI/FS) is ongoing. A Record of Decision (ROD) setting out selected remedies is expected to be accomplished in 2021.

5. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information and Insurance Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance

Information, EPA has determined that Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. EPA is committed to returning formerly contaminated Superfund sites to beneficial and productive uses. Reusing cleaned up sites protects public health and the environment by preventing sprawl, preserving green space and reinvigorating communities.

9. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

10. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its heirs, successors, and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

11. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make cash payments and to implement land use restrictions in accordance with the terms herein to address its alleged civil liability for the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

12. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property, owned or controlled by Settling Party, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, 5211 Southern Avenue in South Gate, Los Angeles County, California.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Financial Information” shall mean those financial documents identified in Appendix B.

“Institutional Controls” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to hazardous substances, pollutants, or contaminants at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of removal or remedial activities; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Insurance Information” shall mean those insurance documents identified in Appendix C.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Parties” shall mean EPA and Settling Party.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

"Settling Party" shall mean 5211 Southern Avenue LLC, a company that owns the property at 5211 Southern Avenue, South Gate, California and Joyce Mendell Brody as the sole member and manager of that company, and Joyce Mendell Brody as an individual.

"Site" shall mean the Southern Avenue Industrial Superfund Site, encompassing but not limited to the approximately 3.9 acres, located at 5211 Southern Avenue in South Gate, Los Angeles County, California, and generally shown on the map included in Appendix A.

"Southern Avenue Industrial Area Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"State" shall mean the State of California.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

VI. PAYMENT OF RESPONSE COSTS

13. **Payment of Response Costs.** Settling Party shall pay to EPA the principal amount of \$134,821.00. Payment of the principal amount shall be made in 2 installments. The first installment payment of \$101,115.75 is due within 30 days after the Effective Date and, if timely paid, shall include no Interest. The subsequent installment payment of \$33,705.25 is due six months after the Effective Date. This subsequent installment payment shall also include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the date of the prior payment until the date of payment. EPA shall send a calculation of the Interest due for the subsequent installment payment to Settling Party after the Effective Date. Settling Party may pay the subsequent installment payment prior to the due date, but must ask EPA in advance for a determination regarding the amount of Interest to be included with the payment.

14. Settling Party's payment(s) shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

The payment shall reference Site/Spill ID Number 09WS and the EPA docket number for this action.

15. **Deposit of Payment.** The total amount of each payment to be paid pursuant to Paragraph 13 (Payment of Response Costs) shall be deposited by EPA in the Southern Avenue Industrial Area Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

16. **Notice of Payment.** At the time of each payment, Settling Party shall also send notice that such payment has been made: (a) to EPA in accordance with Section XIII (Notices and Submissions); and (b) to the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the Site/Spill ID Number 09WS and EPA docket number for this action.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

17. **Interest on Payments and Accelerated Payments.** If Settling Party fails to make any payment required by Paragraph 13 (Payment of Response Costs) by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure, and if the first payment is not timely made, Interest shall accrue from the Effective Date. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

18. Stipulated Penalty

a. If any amounts due to EPA under Paragraph 13 (Payment of Response Costs) are not paid by the required date, Settling Party shall be in violation of this Settlement

Agreement and shall pay to EPA a stipulated penalty in addition to the Interest required by Paragraph 17 (Interest on Payments). The following stipulated penalties shall accrue per violation for each day that a payment is late:

Period of Noncompliance	Penalty Per Violation Per Day
1 st through 14 th day	\$1,000
15 th through 30 th day	\$2,500
31 st day and beyond	\$5,000

b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. Settling Party shall make all payments required by this Section to EPA by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number 09WS, and the EPA docket number for this action.

c. At the time of each payment, Settling Party shall send notice that payment has been made as provided in Paragraph 16 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, or the day a violation occurs, and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

19. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANTS BY EPA

21. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Settlement Agreement). These covenants are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information and the financial, insurance, and indemnity certification made by Settling Party in Paragraph 50. These covenants extend only to Settling Party and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

22. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 21 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement by Settling Party;
- e. liability based on Settling Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

23. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information or the Insurance Information provided by Settling Party, or the financial, insurance, or indemnity certification made by Settling Party in Paragraph 50, is false or, in any material respect, inaccurate.

24. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY SETTTLING PARTY

25. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

26. Except as provided in Paragraph 28 (claims against other PRPs) and Paragraph 33 (res judicata and other defenses), these covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 22.a (liability for failure to meet a requirement of the Settlement Agreement) or 22.b (criminal liability), but only to the extent that Settling Party's claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

27. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

28. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

29. Except as provided in Paragraph 28 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Party), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

30. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 22.a (liability for failure to meet a requirement of the Settlement Agreement) or 22.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

31. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

32. Settling Party shall, with respect to any suit or claim brought by it for matters related to Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon Settling Party. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

33. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding

were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

34. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payments required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 30, and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XII. PROPERTY REQUIREMENTS

35. **Agreements Regarding Access and Non-Interference.** Settling Party shall, with respect to its Affected Property:

a. Provide the United States and third parties who have entered or may enter into an agreement with the United States for performance of response actions at the Site (hereinafter "Performing Parties"), and their representatives, contractors, and subcontractors, with access at all reasonable times to the Affected Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Verifying any data or information submitted to the United States;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Monitoring of investigations, removal, remedial, or other response actions at the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XIII (Access to Information);
- (7) Assessing Settling Party's compliance with the Settlement Agreement;

- (8) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
- (9) Implementing removal or remedial actions as selected by EPA, including but not limited to any potential capping of the Affected Property or Site, or any portion(s) thereof and implementing, monitoring, maintaining, reporting on, enforcing and complying with any Institutional Controls and/or Proprietary Controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of any future remedial measures implemented pursuant to future removal or remedial decision document(s), or that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including, but not limited to, the following restrictions:

- (1) Prohibiting activities which could interfere with response actions at the Site, including but not limited to interfering with, disturbing, or altering removal or remedial systems;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting the following types of land uses on the Affected Property: schools, day care centers, senior centers, hospitals, residential, growing plants or vegetables for consumption;
- (4) Prohibiting activities which could result in exposure to contaminants in subsurface soils and groundwater including any activity which disturbs soils beneath the concrete or asphalt, such as trenching, installation of subsurface utility corridors (including sewer lines), pilings, footings and foundations for buildings;
- (5) Ensuring that surface uses (such as vehicles, equipment, and storage) will be capable of temporary relocation to allow access for any installation and operation of well extraction systems that may be selected as a component of the remedy;
- (6) Ensuring that any new structures on the Affected Property will not be constructed in a manner which could interfere with response actions at the Site; and
- (7) Ensuring that any new structures on the Affected Property will be constructed in a manner which will minimize potential risk of inhalation of contaminants.

36. Commencing on the date of lodging of this Settlement Agreement, Settling Party shall provide EPA thirty (30) days' notice if Settling Party intends to disturb subsurface soils (soils below asphalt or concrete) ten (10) or more inches below ground surface.

37. If EPA determines Institutional Controls and/or Proprietary Controls are necessary in a decision document, the Settling Party agrees to implement and comply with said Institutional Controls and/or Proprietary Controls.

38. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls and/or Proprietary Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Settling Party shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls and/or Proprietary Controls.

39. Notice to Successors-in-Title

a. Settling Party shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA is conducting a response action for the Site; and (3) identify any document requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Settling Party shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Settling Party shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

- (1) Notify the proposed transferee that EPA is conducting a response action regarding the Site; and
- (2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

40. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Settling Party shall continue to comply with its obligations under the Settlement Agreement.

41. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls and/or Proprietary Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

42. Due Care and Cooperation

a. Nothing in this Settlement Agreement shall be construed to relieve Settling Party of Settling Party's duty to exercise due care with respect to the hazardous substances at the Site or Settling Party's duty to comply with all applicable local, State, and federal laws and regulations.

b. Settling Party has informed EPA that Settling Party may seek to lease the Affected Property or portion(s) thereof. If Settling Party seeks to lease the Affected Property or portions thereof, Settling Party must comply with this Settlement Agreement and future decision documents EPA may issue with respect to the Site. Settling Party agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees that in exercising its rights of access hereunder, and consistent with its responsibilities under applicable law, EPA will use reasonable efforts to minimize any interference with Settling Party's operations, including the operations of any lessee, while implementing response actions, recognizing the importance of unobstructed motor vehicle movement across the property to the Settling Party's operations. In the event Settling Party becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Party shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, shall immediately notify EPA in writing of such release or threatened release.

XIII. ACCESS TO INFORMATION

43. Settling Party shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

44. Privileged and Protected Claims

a. Settling Party may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 44.b, and except as provided in Paragraph 44.c.

b. If Settling Party asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Party shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Settling

Party shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Party's favor.

- c. Settling Party may make no claim of privilege or protection regarding:
 - (1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or
 - (2) the portion of any Record that Settling Party is required to create or generate pursuant to this Settlement Agreement.

45. **Business Confidentiality Claims.** Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XIV (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Party asserts a business confidentiality claim. Records that Settling Party claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Party that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Party.

46. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. RETENTION OF RECORDS

47. Until 10 years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that if Settling Party is potentially liable as an owner or operator of the Site, Settling Party must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of these requirements shall apply regardless of any corporate retention policy to the contrary.

48. At the conclusion of the document retention period, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 44 (Privileged and Protected Claims), Settling Party shall deliver any such Records to EPA.

49. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Party's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Party executes this Settlement Agreement; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XV. NOTICES AND SUBMISSIONS

50. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Karen Jurist
Remedial Project Manager
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
Jurist.Karen@epa.gov

As to Settling Party:

5211 Southern Avenue LLC
Joyce Mendell Brody, Manager
2163 Cedarhurst Drive
Los Angeles, CA 90027

XVI. INTEGRATION /APPENDICES

51. This Settlement Agreement and its appendices constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those

expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the map of the Site.

"Appendix B" is a list of the financial documents submitted to EPA by Settling Party.

"Appendix C" is a list of the insurance documents submitted to EPA by Settling Party.

XVII. PUBLIC COMMENT

52. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVIII. EFFECTIVE DATE

53. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 52 has closed and the United States has determined not to withhold its consent or seek to modify this Settlement Agreement based on the comments received, if any.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

8/28/19

Dated

Dana Barton

Dana Barton

Assistant Director

Superfund Division, Region IX

Signature Page for Settlement Agreement Regarding Southern Avenue Industrial Area Superfund Site

U.S. DEPARTMENT OF JUSTICE:

8/14/19

Dated



Ellen M. Mahan
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Washington, D.C. 20044-7611



Patricia Hurst
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Don B. ... 8/28/19

Signature Page for Settlement Agreement Regarding Southern Avenue Industrial Area Superfund Site

FOR: Joyce Mendell Brody
In her individual capacity and as manager of
5211 Southern Avenue LLC

June 4, 2019
Dated

Joyce Mendell Brody
Joyce Mendell Brody
2163 Cedarhurst Drive
Los Angeles, CA 90027

and

5211 Southern Avenue LLC, Manager
2163 Cedarhurst Drive
Los Angeles, CA 90027

Appendix A



EPA United States Environmental Protection Agency

Gilbane

Southern Avenue Industrial Area Superfund Site
Remedial Investigation Report
South Gate, California
US Environmental Protection Agency

Figure 1-1
Site Location Map

Appendix B

Financial Information

- 2014 California Form 568, Limited Liability Company Return of Income for 5211 Southern Avenue LLC
- 2014 IRS Form 1040 for Joyce Brody
- 2015 IRS Form 1040 for Joyce Brody
- 2016 IRS Form 1040 for Joyce Brody
- Grant Deed for 498 Lake Sherwood Drive, Lake Sherwood, CA
- Grant Deed for 28602 S. Montereyina Dr., Rancho Palos Verdes, CA
- Individual Grant Deed for 5211 Southern Avenue, South Gate, CA
- Norman M. Brody and Joyce M. Brody Trust Agreement
- Individual Quitclaim Deed for 498 Lake Sherwood Dr., Thousand Oaks, CA, recorded 6/20/2002
- Joyce M. Brody Qualified Personal Residence Trust Agreement
- Individual Quitclaim Deed for 498 Lake Sherwood Dr., Thousand Oaks, CA, recorded 10/11/2002, from Norman and Joyce Brody's Community Trust to themselves as Husband and Wife
- Individual Quitclaim Deed for 498 Lake Sherwood Dr., Thousand Oaks, CA, from Norman and Joyce Brody as Husband and Wife to Joyce Brody (50%) and Norman Brody (50%)
- Individual Quitclaim Deed for 498 Lake Sherwood Dr., Thousand Oaks, CA, from Norman Brody to Norman Brody as Trustee of his Qualified Personal Residence Trust Agreement
- Individual Quitclaim Deed for 498 Lake Sherwood Dr., Thousand Oaks, CA from Joyce Brody to Joyce Brody as Trustee of her Qualified Personal Residence Trust Agreement
- First Amendment to Norman M. Brody and Joyce M. Brody Trust Agreement dated June 6, 2002
- Grant Deed for 28602 S. Montereyina Dr., Rancho Palos Verdes, CA
- Deed of Trust for 28602 S. Montereyina Dr., Rancho Palos Verdes, CA
- Joyce Brody's Response to EPA's April 11, 2012 7 104(e) Request for Information
- Warranty Deed for 3445 Kelliher Rd., Mt. Horeb, WI
- Quitclaim Deed for 5211 Southern Avenue, South Gate, CA
- Quit Claim Deed for 3442 Kelliher Rd., Mt. Horeb, WI
- Brody Real Property Clear Research
- Affidavit of Change of Trustee (Original Title Document: Individual Quitclaim Deed recorded October 10, 2002, Instrument No. 02-2392133
- Trust Transfer Grant Deed for 498 Lake Sherwood Drive, Lake Sherwood, CA
- Zillow.com Profile for 2163 Cedarhurst Dr., Los Angeles, CA
- Zillow.com Profile for 498 Lake Sherwood Dr., Los Angeles, CA
- Zillow.com Profile for 28602 S. Montereyina Dr., Rancho Palos Verdes, CA
- Individual Ability to Pay Claim for Joyce Brody
- RealQuest Property Detail Report for 5211 Southern Avenue, South Gate, CA
- RealQuest Property Detail Report for 498 Lake Sherwood Dr., Los Angeles, CA
- RealQuest Property Detail Report for 2163 Cedarhurst Dr., Los Angeles, CA
- RealQuest Property Detail Report for 28602 S. Montereyina Dr., Rancho Palos Verdes, CA
- RealQuest Property Detail Report for 3445 Kelliher Rd, Mount Horeb, WI

- Dane County, WI Parcel Summary for 3445 Kelliher Rd., Mt. Horeb, WI (Parcel Number 0706-321-8440-8)
- IRS Form 8821 Tax Information Authorization for Joyce Brody
- IRS Form 8821 Tax Information Authorization for 5211 Southern Avenue, LLC
- EPA Financial Statement for Businesses for 5211 Southern Avenue, LLC
- EPA Financial Statement for Trusts for Norman M. Brody and Joyce M. Brody Trust Agreement dated June 6, 2002
- Joyce Brody's Response to EPA's March 10, 2017 104(e) Request for Information
- Social Security Administration Life Expectancy Calculator
- Nexis Comprehensive Report for Norman M. Brody
- Zillow estimate for 3445 Kelliher Rd., Mt. Horeb, WI
- Nathan Cramer & Associates Response to EPA's May 21, 2018 104(e) Request for Information (Cramer)
- Nathan Cramer & Associates Response to EPA's May 21, 2018 104(e) Request for Information (Gilens)
- Wilshire Insurance Agency's Response to EPA's May 21, 2018 104(e) Request for Information
- National American Insurance Company's Response to EPA's May 21, 2018 104(e) Request for Information
- Genworth Life Insurance Company's Response to EPA's May 21, 2018 104(e) Request for Information
- California FAIR Plan Association's Response to EPA's May 21, 2018 104(e) Request for Information
- Reliance Insurance Company (In Liquidation)'s Response to EPA's May 21, 2018 104(e) Request for Information
- The Hartford Financial Services Group, Inc.'s Response to EPA's May 21, 2018 104(e) Request for Information
- The Hartford Financial Services Group, Inc.'s Response to EPA's September 17, 2018 104(e) Request Follow Up Question
- Various Deeds for 2163 Cedarhurst Drive, Los Angeles, CA
- Redfin.com Profile for 2163 Cedarhurst Dr., Los Angeles, CA

Appendix C

Insurance Information

- Wilshire Insurance Agency's Response to EPA's May 21, 2018 104(e) Request for Information
- National American Insurance Company's Response to EPA's May 21, 2018 104(e) Request for Information
- Genworth Life Insurance Company's Response to EPA's May 21, 2018 104(e) Request for Information
- Reliance Insurance Company (In Liquidation)'s Response to EPA's May 21, 2018 104(e) Request for Information